CF0000059406

Cr.A. 498/96 (01)

Division Bench (Criminal)

/- APPEAL OF PRISONER -/

No. 313 Name माईबी पेदिया

Father's Name बोदी Residence ग्राम- धनेरा

Age 30 Sentenced to आजीवन कारावास on

30.11.95 under Section 302 I.P.C. by I A.S.J. Jagdalpur

S.T.No. 447/93

It is explained to the prisoner that if he states or wishes to be represented by a legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear with the seven days he may be heard at all if the prisoner states that the does not wish to be represented by legal practioner the Court may proceed at once with the case and will not be obliged to give a hearing to any legal proct-itioner who should appear.

1. Date of application for copy of Judgement : No.

2. Date of which copy received :- 30.11.95

3. Date on which Appelisent :- 16.12.95

4. Whether the prisoner wished to be represented or not Yes/~~No.~~

No. 313 Name माईबी पेदिया पिता बोदी

Continued in जिला Jail जगदलपुर

No. 207 / octagon / 95 Dated 16/12/95

Forwarded to the CHIEF JUDICIAL MAGISTRATE Jagdalpur together with a copy of judgement or order passed in the case for favour of transmission to the proper Appliate Court.

अधीक्षक
Superintendent Central/Distt./
जिला जेल, बस्तर
जगदलपुर

Date of receipt in C.J.M's Office. 20.12.95

Date of receipt of record of accompany.

Memo of Appeal of the Appelliate Court.

No. 7080 Dated 20.12.95

Forwarded to the Hble Sessions Judge Jagdalpur.

C.J. Magistrate

Date of receipt of Appelliate Court.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक G.A. 488/96 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: -

HON'BLE MR. L.C. BHADOO AND
HON'BLE MR. V.K. SHRIVASTAVA, JJ.

19-12-2005

Mrs. Kiran Jain, counsel for the appellant.

Mr. R.R. Sinha, Panel Lawyer for the State/respondent.

Oral judgment.

By this appeal through the Superintendent, Central Jail, Jagdalpur, appellant Madvi Podiya has questioned the legality of judgment of conviction and sentence dated 30-11-1995 passed by the 1st Additional Sessions Judge, Bastar at Jagdalpur in Sessions Trial No.447/93, whereby learned Additional Sessions Judge after holding the accused/appellant guilty for the commission of offence under Section 302 of the I.P.C. sentenced him to undergo imprisonment for life.

The case of the prosecution, in brief, is that 3-4 years before the date of incident i.e. 9-6-1993, land was partitioned between the accused/appellant and his younger brother Mangdu. The brothers were not satisfied about the partition and therefore, some dispute was going on. After partition, the accused/appellant sold his share and started demanding share again from his brother under the pretext that the land has not been partitioned. On the date of incident 9-6-1993 deceased

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Madvi Aayte was at her residence, the accused came with the axe, at that time, brother of the accused Mangdu was taking his meal, when deceased Madvi Aayte went to fetch water in order to provide the same to her husband, at about 23 hours in the night, Madvi Podiya attacked Madvi Aayte with the axe on right side of her stomach, as a result of which blood started oozing out of the stomach and intestine came out and she fell down on the earth. At about 11.30 a.m. on 10-6-1993, she reported the matter to Police Station: Kodenar where Crime No.47/93 was registered under Section 307 of the I.P.C. and she was admitted in the Maharani Hospital Jagdalpur, where she succumbed to the injuries, therefore, the offence was converted from Section 307 of the I.P.C. to Section 302 of the I.P.C.

The Investigating Officer after giving notice to the Panchas Ex.P-2, prepared the Panchnama of the body of Madvi Aayte Ex.P-3. He prepared the site plan of the place of occurrence Ex.P-1. Post-mortem on the body was conducted by Dr. K.R. Mourya, Assistant Surgeon, Maharani Hospital, Jagdalpur. He prepared the post mortem report Ex.P-7. Clothes of the deceased were taken into possession under Ex.P-5. After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate, First Class, Jagdalpur, who in turn, committed the case to the Sessions Judge, Jagdalpur, from where, the Additional Sessions Judge received the case on transfer for trial.

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The prosecution in order to prove the charge against the accused, examined in all 11 witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the material appearing against him and stated that he is innocent and falsely implicated in the crime.

We have heard learned counsel for the parties.

Learned counsel for the accused/appellant has not disputed the fact of homicidal nature of the death of Madvi Aayte. Apart from that, from the post-mortem report Ex.P-7 and the evidence of Dr. K.R. Mourya (PW-9) in which he has stated that he conducted the post-mortem on 11-6-2003 and there was a wound of the size of 3 x 5 cms. on the stomach, from that wound the intestine was coming out even the intestine was injured at two places, the injuries were ante-mortem in nature and the death was homicidal in nature. She died due to shock on account of injury No.1. Madvi Galve (PW-6), Madvi Mangdu (PW-7), & Madvi Dhurva (PW-8) are the eyewitnesses to the incident and they have stated that the accused attacked with the axe on Madvi Aayte. Therefore, in view of this ocular evidence and the medical evidence, it is established that the death of Madvi Aayte was homicidal in nature.

Now, coming to the involvement of the accused in the crime in question, same has not been disputed by learned counsel for the appellant. PW-6 Madvi Galve has stated that the accused is his son, on

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the fateful night, the accused attacked with the axe on Madvi Aayte and ran away. Before that, the accused quarrelled with Mangdu regarding money. The above evidence of Madvi Galve has been corroborated by Mangdu, husband of the deceased, and PW-8 Madvi Dhurva. Even Madvi Aayte herself lodged the report of the incident. PW-4 Mahadev has stated that Panchayat was convened after the incident and in the Panchayat the accused made extra judicial confession that he attacked Madvi Aayte with the axe. PW-5 Bomda in para 2 of his evidence has stated that before Panchayat, the accused made extra judicial confession regarding attacking Madvi Aayte with the axe. Therefore, in view of the evidence of the eyewitnesses, the extra judicial confession made by the accused, and based on the medical evidence, it stands proved that the accused attacked Madvi Aayte with the axe.

Learned counsel for the appellant argued that since there was a dispute between the accused and his brother Mangdu regarding partition of land, on the fateful day Mangdu assaulted the accused with the wooden bamboo, and when the accused was attacking with the axe on Mangdu, Madvi Aayte came in between and the axe landed on her stomach and she received the injuries. Therefore, the incident happened all of a sudden, as such the offence does not travel beyond Section 304 Part-II of the I.P.C.

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

On the other hand, Mr. Rajput, learned Panel Lawyer for the State/respondent supported the judgment of the trial Court and argued that this is not a case of sudden fight.

In order to appreciate the arguments advanced by learned counsel for the parties, we have perused the evidence of eyewitnesses namely, PW-6 Madvi Galve who is the mother of the accused. She has stated that there was a dispute between the two brothers i.e. the accused and Mangdu, husband of the deceased, about the partition of money. The accused came with an axe and assaulted Madvi Aayte with the axe on her stomach and thereafter, he ran away. In the cross-examination, she has further stated that when the deceased was going to fetch water, at that time, the accused assaulted her. PW-7 Madvi Mangdu, husband of the deceased, has stated in para 3 of his evidence that as he ploughed the filed of the accused, on account that there was a dispute, on account of that animosity, the accused assaulted his wife with the axe. In the cross-examination, he has stated that it is correct to say that his mother was sitting in the courtyard, her wife went to fetch water and the accused attacked her with the axe. Same is the evidence of PW-8 Madvi Dhurva.

Learned counsel for the appellant while drawing the attention of the Court towards para 2 of the evidence of Poyami Manglu (PW-10) argued that Mangdu first attacked the accused, thereafter, the

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

accused attacked with the axe. The above evidence of this witness cannot be accepted, because the mother of the accused, the husband of the deceased & PW-7 Madvi Mangdu were present on the scene of occurrence and nothing has come in the cross-examination of these witnesses that Mangdu had assaulted the accused and thereafter, the accused assaulted Madvi Aayte. In the examination-in-chief, also this witness has stated that the accused came with the axe from his house and assaulted Madvi Aayte.

Therefore, in view of the above evidence, there is nothing on record, which shows that some quarrel took place at the time of incident between the brothers and in that process, the accused all of a sudden picked up the axe and assaulted the deceased with the axe. In the circumstances, we do not find any substance in the argument of learned counsel for the appellant. The intention of the accused can be gathered from the manner in which the accused assaulted the deceased, the weapon of offence with which the crime was committed and the vital part of the organs of the body on which the accused assaulted the deceased with the axe while assaulting Madvi Aayte, that the accused wanted to commit her murder.

Therefore, the finding of the trial Court convicting the accused/ appellant under Section 302 of the I.P.C. is based on legal evidence and same does not require any interference by this Court.

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	In the result, the appeal is devoid of merit, same is liable to be dismissed, and it is hereby dismissed. Sd/- L.C. BHADOO Judge	Sd/- Vijay Kumar Shrivastava Judge

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